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class, and other beneficial provisions which would possibly postpone the distribution until after the death of the life-tenant. Some of the American cases seem to turn on whether the remainder is vested or contingent, favoring the later time for closing the class when contingent.²⁴ An examination of the Massachusetts cases shows that each is decided on its own particular facts.²⁵ Such considerations as a slight consequent practical difficulty in distribution,²⁶ or the violation of the rule against perpetuities by a provision later than the one under consideration in case the death of the life-tenant is taken as the proper time²⁷ may influence the court adversely. It is submitted, however, that the principal case is correct, though it relies on the one inference only, and that on principle this is the reasonable result in accordance with the more probable intention of the testator.²⁸

EFFECT OF AN UNREGISTERED TRANSFER OF STOCK.—With regard to the effect of an unregistered transfer of stock where the governing statute, charter, or by-laws of the corporation, provide that the stock shall be transferable only on the books, a variety of conclusions have been reached. A distinction could with propriety be drawn between such a provision contained in the governing statute and a like provision in the by-laws, since, in the former case, it might be construed as a legislative restriction on the assignability of the shares, while, in the latter, it would merely form part of the contract between the corporation and its shareholders, of which a creditor, or purchaser from the transferor, could not take advantage.¹ But this distinction does not seem generally to have been observed by the courts.² It must also be noticed that, in all jurisdictions, the transfer is complete as between the parties, no matter what the nature of the title acquired by the transferee.³ The question is only of importance when the rights of third parties are involved.

It is impossible to support the view that registration is a necessary condition to the passing of any title whatsoever, since in no jurisdiction where the purchaser or attaching creditor of the transferor has notice of the prior transfer will his rights be protected,⁴ a result which assumes the acquisition by the prior transferee of some rights as against third parties. Perhaps the most generally accepted theory is that the provision in question is a restriction on the assignability of the legal title to stock, and that the transferee acquires an equitable title merely.⁵ This view explains the protection afforded to a *bona fide* purchaser from the transferor. But a complete acceptance of it involves difficulties. The interest

²⁴Johnson v. Askey, *supra*; Delaney v. McCormack (1882) 88 N. Y. 174.

²⁵Cf. Welch v. Brimmer, *supra*; Heard v. Read (1897) 169 Mass. 216.

²⁶Rotch v. Rotch (1899) 173 Mass. 125.

²⁷Rand v. Butler (1880) 48 Conn. 293.

²⁸Contra, cf. 2 Jarman, Wills (2nd Am. Ed.) 676.

¹Cf. Blanchard v. Dedham etc. Co. (Mass. 1858) 12 Gray 213, with Sargent v. Essex etc. Ry. Co. (Mass. 1829) 9 Pick. 202.

²Oxford Turnpike Co. v. Bunnell (1827) 6 Conn. 552.

³Johnson v. Laffin (1878) 5 Dill. 65, at 79.

⁴Cheever v. Meyer (1879) 52 Vt. 66; Burse Live Stock Co. v. Range V. C. Co. (1897) 16 Utah, 59.

⁵Otis v. Gardner (1885) 105 Ill. 436; Lippitt v. American Wood Paper Co. (1885) 15 R. I. 141; Fisher v. Bank (Mass. 1855) 5 Gray 373.

of the transferee is so far complete that he may, after knowledge that the stock was held in trust by the transferor, get in the legal title by registration without making himself a party to the breach of trust.⁶ True, the basis for this proposition is said to be that an irrevocable power of attorney has been given by the use of which the transferee does not induce a wrongful act,⁷ and, in England, before registration, the transferee holds subject to prior equities.⁸ But in this country it has been held, apparently without reference to subsequent registration, that the transferee takes free from prior equities,⁹ and where the corporation refuses to make the transfer because of an equitable prior interest, at least one court, abiding generally by the view that the transferee acquires only an equitable title, has felt compelled in this situation to concede him a legal title.¹⁰ Another objection to the theory that, without registration, the transferee acquires only an equitable title is that a waiver, or a wrongful refusal to register, by the corporation, is generally regarded as equivalent to actual registration.¹¹ If the provision in question be a restriction on alienation, it is difficult to see how the corporation can nullify that restriction. It is accordingly believed that the best view is to regard the stock certificate as passing to the transferee the whole legal and equitable title.¹² The provision of the statute is for the protection of the corporation only.¹³ It is true that this protection has been extended to *bona fide* purchasers from the transferor, the courts falling back on the theory of equitable title.¹⁴ The extension seems unwarrantable. Indeed, in view of the modern method of stock transfers, it is hard to consider as a *bona fide* purchaser a vendee who does not insist on the production of the certificates.

In a recent New Jersey case, after stock had been transferred without registration, a creditor of the transferor attached it and it was sold to an innocent purchaser for value. The court held that the holder of the certificate had the better right to the stock. *Reilly v. Absecon Land Co.* (N. J. 1908) 71 Atl. 248. The cases are pretty evenly divided on the question at issue. It has been said that if the transferee takes the legal title there is nothing left to attach and the creditor gets no rights.¹⁵ But the same result would follow if only an equitable title passed to the transferee, since an attaching creditor is not a *bona fide* purchaser.¹⁶ The only plausible theory by which protection can be afforded an attaching creditor is to construe the provision requiring registration as in the nature of a recording act,¹⁷ and there is much to be said in favor of this

⁶*Dodds v. Hills* (1865) 2 Hem. & Mil. 424.

⁷*Ames*, 1 Harv. Law Rev. 1.

⁸*Roots v. Williamson* (1888) L. R. 38 Ch. Div. 485.

⁹*Salisbury Mills v. Townsend* (1871) 109 Mass. 115; *Ross v. Southwestern R. R.* (1874) 53 Ga. 514.

¹⁰*Winter v. Montgomery Gas Light Co.* (1889) 89 Ala. 544.

¹¹*American Nat'l Bank v. Oriental Mills* (1891) 17 R. I. 551; *Weber v. Bullock* (1893) 19 Colo. 214.

¹²*McNeill v. Tenth Nat'l Bank* (1871) 46 N. Y. 325.

¹³*Sceligson & Co. v. Brown* (1884) 61 Tex. 114.

¹⁴*N. Y. & H. H. R. R. v. Schuyler* (1865) 34 N. Y. 30, p. 80.

¹⁵*Smith v. American Coal Co.* (N. Y. 1873) 7 Lans. 317.

¹⁶*De Peyster v. Gould* (1836) 3 N. J. Eq. 474.

¹⁷*Scripture v. Soap Stone Co.* (1871) 50 N. H. 571; *Fort Madison etc. Co. v. Batavian Bank* (1887) 71 Ia. 270; and see article in 1 Am. & Eng. Corp. Cas. XVII at p. XXXVII.

view.¹⁸ But there are fatal objections. (1) The construction, obviously, is only proper where the statute provides that the corporate books shall be open to inspection.¹⁹ (2) The provision was constantly enacted before stock was made attachable.²⁰ (3) It is opposed to the general policy of our courts to enhance the safety and ease of transfers of stock.²¹ There is a line of cases which hold that, where property is sold but left in the possession of the vendor, a creditor may attach it, since the continued possession by the vendor is a badge of fraud and evidence of a secret trust. Following these cases it has been held that an attaching creditor acquires good title to stock standing in the name of the debtor, since the retention of some of the indicia of ownership is a badge of fraud.²² This view is objectionable, not only on some of the grounds stated above, but also because to-day a man's name on the books of the corporation is not such an indication of ownership as would mislead any one. Except where actual fraud is shown, the rights of a purchaser of a certificate ought to be protected against the claims of a subsequent attaching creditor of the transferor. The principal case illustrates the better view of a much vexed question.

THE PRESUMPTION OF LIFE.—*Continuity* is frequently said to be a subject of presumption. By this it is meant that, when a relation or condition of things, for example, is proved to have existed at a certain time, its continuance is presumed until the contrary is shown.¹ This principle has been applied, in terminology at least, to agency,² domicile, residence or non-residence,³ seisin,⁴ infancy,⁵ sanity or insanity,⁶ coverture,⁷ partnership,⁸ solvency or insolvency,⁹ possession and ownership of property.¹⁰ So also it was laid down in an early English case,¹¹ later followed by high authority,¹² that a person once shown to be living is presumed to be alive (for any reasonable period)¹³ until his death is proved.

¹⁸30 Am. Law Rev. 223.

¹⁹Broadway Bank v. McElrath (N. J. 1860) 2 Beas. 24.

²⁰Allen v. Stewart (1895) 7 Del. Ch. 287.

²¹Bank v. Lanier (1870) 11 Wall. 369.

²²Pinkerton v. The R. R. (1861) 42 N. H. 424; cf. Shipman v. Aetna Ins. Co. (1860) 29 Conn. 245.

¹Best, Ev. (8th Ed.) 686, *et seq.*; 1 Greenl., Ev. § 41, 42; 28 Alb. L. J. 284, 326; 29 Id. 347.

²Smout v. Ilbery (1842) 10 M. & W. 1; McKenzie v. Stevens (1851) 19 Ala. 691; Ryan v. Sams (1848) 12 Q. B. 460.

³Prather v. Palmer (1841) 4 Ark. 456; Inhabitants v. Inhabitants (1863) 6 Allen 508; Bell v. Kennedy (1868) L. R. 1 S. & D. App. 307.

⁴Wrotesley v. Adams (1557) Plowd. 187, 193; Smith v. Stapleton (1568) Plowd. 426, 431; Brown v. King (1842) 5 Metc. 173.

⁵Irvine v. Irvine (1860) 5 Minn. 61; *Re Lilleshall* (1845) 7 Q. B. 158.

⁶Menkins v. Lightner (1857) 18 Ill. 282; State v. Johnson (1873) 40 Conn. 136.

⁷Erskine v. Davis (1861) 25 Ill. 228.

⁸Cooper v. Dedrik (1856) 22 Barb. 516; Park v. Alexander (1844) 8 Scott N. S. 147, 161.

⁹Walrod v. Ball (1850) 9 Barb. 271; Mullen v. Pryor (1848) 12 Mo. 307.

¹⁰Magee v. Scott (1851) 9 Cush. 148; Lepout v. Todd (1866) 32 N. J. L. 124; Currier v. Gale (1856) 9 Allen 522.

¹¹Throgmorton v. Walton (1624) 2 Rolle Rep. 461.

¹²Wilson v. Hodges (1802) 2 East 312.

¹³Thomas v. Thomas (1864) 2 Dr. & Sm. 298; cf. Dixon v. Dixon (1792) 3 Bro. C. C. 510.